IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

WEDNESDAY, THE NINTH DAY OF MARCH
TWO THOUSAND AND FIVE

PRESENT

THE HON'BLE MR JUSTICE B.PRAKASH RAO

WRIT PETITION NO : 15669 of 2002

Between:

Ch. Pulinder Reddy, S/o Venkat Reddy,
E-80397 Mahabubabad Depot, Warangal District.

..... PETITIONER

AND

1 The Depot Manager,
A.P.S.R.T.C. Mahabubabad Depot,
Warangal District.
2 The Regional Manager,
A.P.S.R.T.C. Warangal Region,
Warangal District.
3 The Managing Director,
A.P.S.R.T.C. Musheerabad,
Hyderabad.

.....RESPONDENTS.

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court may be pleased to issue any Writ, order or direction more particularly one in the nature of Writ of Mandamus or any other appropriate Writ, order or direction declaring the impugned order dated 01-09-2001 issued by the 1st Respondent in E1/756(1)/2001-MHBD voluntary retiring from the service is illegal, void, *ab initio* and contrary to the Rules and set aside the same consequently direct the Respondents to take the petitioner into service when and where the petitioner has retired from service in the interest of justice and equity and pass such other order or orders as this Hon'ble Court may deem fit and proper in the circumstances of the case.

Counsel for the Petitioner:MR.A.K.JAYAPRAKASH RAO

For the Respondents: SMT.P.RAJANI REDDY, Standing Counsel for

A.P.S.R.T.C.

The Court made the following :

ORDER:

Heard Sri A.K.Jaya Prakash Rao, the learned counsel appearing on behalf of the petitioner and Smt P. Rajani Reddy, the learned standing counsel appearing on behalf of the respondents.

The petitioner herein, who had been working as a Driver with the respondents-Corporation, filed this writ petition, *inter alia*, seeking for a writ of Mandamus challenging the validity of the orders of the first respondent passed on 01.09.2001 whereunder the petitioner was sought to be retired in pursuance of an application filed by him earlier seeking voluntary retirement on 24.07.2001.

There is no dispute to certain facts to the effect that the petitioner did apply for voluntary retirement as per the application filed on 24.07.2001 and he continued to work thereunder till 31.08.2001. However, subsequently on 28.08.2001, the petitioner had filed another application withdrawing his earlier application dated 24.07.2001 in regard to the option for voluntary retirement. The case of the petitioner is that In spite of the same, the first respondent passed impugned orders dated 01.09.2001 retiring him from service. Hence, the writ petition.

In the additional counter filed by the Law Officer on behalf of the respondents, it is submitted that the petitioner had filed an application on 24.07.2001for voluntary retirement and thereupon the impugned orders came to be passed on 01.09.2001. However, it is pointed out in the counter affidavit to the effect that the petitioner filed the said application on 28.08.2001and the same was received by the Record Tracer working with the respondents under due acknowledgement, but since he was busy in issuing passes, the said application was stamped and taken over by the party without the knowledge of the Record Tracer, whereupon, the respondents have

already initiated disciplinary action by issuing charge-sheet. Therefore, it cannot be said that there is any lapse on the part of the respondents. Further, the petitioner has already withdrawn all the retirement benefits to which he is entitled to. Thus, the present writ petition is not maintainable and liable to be dismissed.

Having considered the submissions made on both the sides and on perusal of the material, the question which has to be considered in this writ petition is as to whether in the facts and circumstances, non-consideration of the withdrawal application filed by the petitioner on 28.08.2001 is justified and whether there is any valid retirement from service ?

There is no dispute to the fact that the petitioner was working as a Driver with the respondents and he had opted for voluntary retirement from the service as per the application dated 24.07.2001 and subsequently he made another application on 28.08.2001 for withdrawal of the said earlier application and the same was under due acknowledgement. There is no dispute in regard to the receipt of the application dated 28.08.2001 as admitted in the counter affidavit and however, blame is sought to be put on the Record Tracer who though received the said application, did not bring the same to the notice of the concerned Officer as he was busy in issuing passes and ultimately the same was taken away by the party. Therefore, the respondents, without having any knowledge of the application which has already been filed on 28.08.2001, passed the impugned orders dated 01.09.2001.

Having regard to these circumstances, since admittedly the petitioner sought to withdraw his earlier application as per the later application, necessarily it follows that the same has to be considered on merits and disposed of in accordance with law. Instead, the respondents having admitted that there is a receipt of such application on 28.08.2001, straight away passed the impugned orders which itself is totally unsustainable. Even-though some action is sought to be initiated against the Record Tracer for not bringing the said application to the notice of the authorities, that itself would not absolve the obligation on the part of the respondents to consider the later application filed by the petitioner which is well within time.

In view of the same, the writ petition is allowed. The impugned orders dated 01.09.2001 are set aside. The first respondent is directed to reconsider the entire issue in view of the later application filed by the petitioner on 28.08.2001 for withdrawal of the earlier application and pass orders in accordance with law including as to the other benefits to which the petitioner is entitled. The entire exercise shall be completed within a period of two months from the date of receipt of copy of this order. No costs.

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B. PRAKASH RAO, J

9th March 2005.

Chvn.

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this the Wednesday, the Ninth day of March Two thousand and five.

ASSISTANT REGISTRAR.

// TRUE COPY//

SECTION OFFICER.

To

1 The Depot Manager
A.P.S.R.T.C. Mahabubabad Depot,
Warangal District

2 The Regional Manager
A.P.S.R.T.C. Warangal Region
Warangal District

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4 Two C.D. copies.